

REMARKS

Applicants first note that the Examiner appears to have only considered claims 1-19 in this restriction requirement. However, claims 1-20 were standing following the Article 19 Amendments as indicated in Applicants' preliminary amendment and priority claim submitted on July 5, 2005. Notification Concerning Transmittal of Copy of International Application as Published or Republished mailed from the International Bureau of WIPO on March 17, 2005 also indicates above claim status, a copy of which is enclosed herewith for the Examiner's convenience (*see* Exhibit A.) As such, Applicants respectfully request that the Examiner also consider previously presented claim 20 in the instant case.

In this restriction requirement, the Examiner states that Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features for the reasons that glyphosate tolerant cotton plants were known in the art at the time of the instant invention. Applicants respectfully disagree and wish to present the following arguments.

The present application is a national phase application under 35 U.S.C. §371 of PCT/US2004/002907. International Preliminary Examining Authority already considered unity of invention under PCT Rule 13.1 and 13.2 and ruled that the present invention has unity. A copy of the International Preliminary Report on Patentability for the corresponding PCT application is enclosed herewith for the Examiner's convenience (*see* Exhibit B.) In accordance with MPEP 1850 under the section titled "The Requirement for 'Unity of Invention'", when the Office considers international applications during the national stage as a Designated or Elected Office under 35 U.S.C. §371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111. And, in

applying PCT Rule 13.2 to national stage applications under 35 U.S.C. §371, examiners should consider for unity of invention all the claims to different categories of invention in the application and permit retention in the same application for searching and/or preliminary examination, claims to the categories which meet the requirements of PCT Rule 13.2.

Applicant believes that the present claims of Groups I-IV meet the requirement of PCT Rule 13.2, because these groups all relate to the novel and inventive cotton event MON 88913, whether they are drawn to the plants or seeds of the event, or DNA primers specific for the event, or DNA detection kits that detect the event, or method of determining zygosity of the progeny of the event. It is the event MON 88913, not any glyphosate tolerant cotton plants, that is being claimed in the present invention. Cotton event MON 88913 is the special technical feature that makes a contribution over the prior art under PCT Rule 13.2, because this event not only is structurally different from the commercial cotton event (e.g., 1445, which was used as the commercial standard for comparing glyphosate tolerance in the present application), but also demonstrates at least 100% more glyphosate tolerance than the commercial standard (*see* paragraph [0055]-[0057] and Table 1 of the instant specification). In fact, the novelty and inventive step of cotton event MON 88913 have been acknowledged in the International Preliminary Report on Patentability for the corresponding PCT application (*see* Exhibit B.)

In view of the above remarks, Applicants believe that Groups I-IV all relate to a single general inventive concept and that a search conducted for all of these groups would not be unduly burdensome. However, in the event that the restriction requirement is not withdrawn, Applicants elect, with traverse, Group I, claims 1-6, 10, 11, 16 and 19, drawn to a glyphosate tolerant cotton seed or plant comprising the event MON 88913, for further examination. Applicants' basis for traversal has been presented above.

In this elected group of claims, claims 1-6 have been cancelled and new claims 21-34 have been added to better define the present invention. These new claims incorporate the subject matters of the cancelled claims 1-6 and are within the scope of the presently elected group. Support for these new claims is presented in the table below. In addition, claims 17 and 19 have been amended for formality reasons that are not related to patentability. No new matter is introduced.

Table of Support

New Claim No.	Support (from former claims and instant specification)
21	Claim 1; paragraphs [0006] and [0075]
22 and 28	Claims 4 and 5; paragraph [0048]; Figures 2 and 3
23 and 29	Claims 4 and 5; paragraphs [0008] and [0048], Figures 4 and 5
24 and 30	Claims 4 and 6; paragraph [0072]
25	Claim 3; paragraph [0006]
26, 27, 31 and 32	Paragraphs [0048], [0071] and [0072]
33	Claim 1; paragraph [0006]
34	Claims 5 and 10

With the present amendments, there are now 28 claims pending in the present application, namely, claims 7-34. In the event that the restriction requirement is not withdrawn, claims 10, 11, 16, 19 and 21-34 are within the scope of the presently elected group I and should be examined together.

This paper is filed timely. No fee is believed to be due; however, should any fees be required for any reason relating to this paper, the Commissioner is authorized to deduct said fees from Howrey LLP Deposit Account No. 01-2508/11899.0239.PCUS00.

Respectfully submitted,



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